

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200813004**

Release Date: 3/28/2008

Index Number: 2652.01-02, 9100.00-00,
2642.00-00, 2654.03-00

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B04 – PLR-102761-07

Date:
December 06, 2007

Re:

Legend:

Husband =

Wife =

Date 1 =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

Year 6 =

Year 7 =

Year 8 =

Trust =

\$A =

\$B =

\$C =

\$D =

\$E =

\$F =

Dear _____ :

This is in response to a letter dated January 5, 2007, from your authorized representative, requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to allocated the generation-skipping transfer (“GST”) tax.

Facts

Taxpayers are Husband and Wife. Husband established Trust, an irrevocable trust under an agreement dated Date 1, for the benefit of Taxpayers' children, grandchildren, and other descendants.

In Year 1, Year 2, Year 3, Year 4, Year 5, Year 6, Year 7, and Year 8, Husband made several transfers to Trust. For each year in which transfers were made, Taxpayers filed Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns, and elected under § 2513 to treat the gifts as made one-half by each spouse. However, with respect to the transfers in Years 1, 2, 3, 5, 7 and 8, Taxpayers' tax advisors who prepared the Forms 709 failed to properly allocate Husband's and Wife's GST exemption to the transfers attributable to each spouse.

Section 2513(a) provides generally that, for gift tax purposes, if the parties consent, a gift made by one spouse to any person other than his or her spouse shall, for gift tax purposes, be considered as made one-half by the donor spouse and one-half by his or her spouse.

Section 2601 imposes a tax on every generation-skipping transfer (within the meaning of subchapter B). A "generation-skipping transfer" is defined under § 2611(a) as: (1) a taxable distribution; (2) a taxable termination; and (3) a direct skip.

Section 2602 provides that the amount of the GST tax is determined by multiplying the taxable amount by the applicable rate. Section 2641(a) provides that the term "applicable rate" means with respect to any GST transfer, the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

Under § 2642(a)(1), the inclusion ratio with respect to any property transferred in a generation-skipping transfer is generally defined as the excess of 1 over the "applicable fraction". The applicable fraction, as defined in § 2642(a)(2) is a fraction, the numerator of which is the amount of GST exemption under § 2631 allocated to the trust (or to property transferred in a direct skip), and the denominator is the value of the property transferred to the trust or involved in the direct skip.

Section 2631(a), as in effect for decedents dying and generation-skipping transfers before January 1, 2004, provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted for inflation under § 2631(c)) which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 26.2632-1(b)(2) of the Generation-Skipping Transfer Tax Regulations provides that an allocation of GST exemption to property transferred during the transferor's lifetime is made on Form 709. In general, an allocation of GST tax exemption is void to the extent the amount allocated exceeds the amount necessary to obtain a zero inclusion ratio with respect to the trust.

Section 2642(b)(1) provides that, except as provided in § 2642(f), if the allocation of the GST exemption to any transfers of property is made on a gift tax return filed on or before the date prescribed by § 6075(b) for such transfer or is deemed to be made under § 2632(b)(1) or (c)(1) the value of such property for purposes of § 2642(a) shall be its value as finally determined for purposes of chapter 12 (within the meaning of § 2001(f)(2)).

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of this paragraph.

Section 2642(g)(1)(B) provides that in determining whether to grant relief under § 2642(g)(1), the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute. See Notice 2001-50, 2001-20 C.B. 189.

Section 2652(a) and § 26.2652-1(a)(4) of the Generation-Skipping Transfer Tax Regulations provide that, if, under § 2513, one-half of a gift is treated as made by an individual and one-half is treated as made by the spouse of the individual, then for purposes of the GST tax, each spouse is treated as the transferor of one-half of the entire value of the property transferred by the donor spouse, regardless of the interest the electing spouse is actually deemed to have transferred under § 2513.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice

the interests of the government.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Based on the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 are satisfied. Therefore, Husband is granted an extension of time of 60 days from the date of this letter to allocate his available GST exemption to Trust, as follows:

1. For Year 1 to allocate additional GST exemption of \$A;
2. For Year 2 to allocate additional GST exemption of \$A;
3. For Year 3 to allocate additional GST exemption of \$B;
4. For Year 5 to allocate GST exemption of \$C;
5. For Year 7 to allocate GST exemption of \$D;
6. For Year 8 to allocate GST exemption of \$E.

In addition, Wife is granted an extension of time of 60 days from the date of this letter to allocate her available GST exemption to Trust, as follows:

1. For Year 1 to allocate additional GST exemption of \$A;
2. For Year 2 to allocate additional GST exemption of \$A;
3. For Year 3 to allocate additional GST exemption of \$B;
4. For Year 5 to allocate GST exemption of \$C;
5. For Year 7 to allocate GST exemption of \$D;
6. For Year 8 to allocate GST exemption of \$E.

In this regard, in Year 6, prior to 2001, Husband and Wife took corrective action by making late allocations of \$F to cover the failure to allocate additional GST exemption in Year 3, and the failure to allocate any exemption in Year 5. Assuming that Husband and Wife had sufficient available GST Tax exemption and assuming sufficient GST Tax exemption is allocated with respect to the transfers made to Trust in Years 1 through 5 pursuant to the relief granted in this private letter ruling, the allocations will be deemed timely. Therefore, immediately prior to the late allocation in Year 6, Trust will be deemed to have a zero inclusion ratio for GST Tax purposes, unless, as noted in the caveat below, it is determined that additional transfers were made to Trust. Therefore, under § 26.2632-1(b)(2)(i), the late allocation in Year 6 of Husband's and Wife's GST exemption is treated as ineffective.

The allocation of Taxpayers' GST exemption should be made on supplemental Forms 709 and filed with the Internal Revenue Service Center in Cincinnati. A copy of this letter should be forwarded to the Internal Revenue Service, Cincinnati Service Center – Stop 82, Cincinnati, OH 45999, for association with the Form 709.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination

Except as specifically ruled herein, we express no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code. In particular, an issue has been presented regarding whether Taxpayers paid income tax for which they were not liable, with regard to Trust income. Accordingly, no opinion is expressed as to whether Trust will have a zero inclusion ratio as a result of the allocations made pursuant to the relief granted herein.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

William P. O'Shea
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure

Copy for section 6110 purposes
Copy of this letter

cc: